further discovery cannot be conducted without leave of court. The portion of the statute upon which Finnegan relies is taken out of context. (For an example of the ludicrous results that can obtain when language is taken out of context, see *Halbert's Lumber, Inc. V. Lucky Stores, Inc.* (1992) 6 Cal.App.4th 1233, 1245, fn. 9 [story of Victorian preacher who took phrase "let him-which is on the housetop not come down" and converted it to mean that women could not wear their hair in "top knots", as in "top not come down"].) There is no issue in this case that Finnegan's deposition as an expert witness was scheduled inside the verboten discovery cut-off period to which Civil Code section 2024 actually applies.

Moreover, even if the statute were a limit (one-day) on the length of a deposition, it would not have justified Finnegan's refusal to show up at the deposition. His previous deposition testimony was entirely devoted to his role as *percipient* witness. No sensible reading of a rule limiting deposition time (e.g., Fed. Rule Proc. 30(d)(2) [normal time for deposition is one day of seven hours]) would allow a party to sandbag his or her opponent by dividing himself or herself into, in effect, two witnesses, one percipient and one expert. If that were possible, in theory a litigant could cut in half the time which his or her opponent would have for a deposition.

Second, Finnegan claims that his testimony as an expert witness was protected by the work product privilege. He specifically relies on Code of Civil Procedure, section 2018, subdivision (c), the language therein saying, "[a]ny writing that reflects an attorney's impressions, conclusions, opinions, or legal research or theories shall not be discoverable under any circumstances." Finnegan asserts that he did not have to submit to the deposition because the testimony that would be elicited was protected by the attorney work product doctrine.

But Finnegan's ideas, notes, and conclusions were protected under the work-product doctrine *only to the extent* they were derived from his *role as an attorney*. The work product doctrine cannot provide protection to Finnegan's impressions as an expert. Were the rule otherwise, the law again would be frustrated by the simple expedient of a party choosing both to represent himself as an attorney and be his own expert witness.

As a final matter, we note that the trial court had no choice

but to exclude Finnegan's testimony *qua* expert witness. According to Code Civil Procedure section 2034, each party to a lawsuit may designate an individual as an expert witness to assist with the implementation of his or her case. The designating party must make its expert witnesses known to opposing counsel by way of a designation. (Code Civ. Proc. § 2034, subd. (f)). Once the designations are made, the opposing side becomes *entitled* to take the deposition of the expert witness with regard to his expertise. (Code Civ. Proc., § 2034, subd. (i).)

And if that entitlement is unreasonably thwarted, the court has no choice but to dismiss. The consequences for failure to submit one's expert to a deposition are mandatory: "The trial court *shall* exclude from evidence the expert opinion of any witness that is offered by any party who has unreasonably failed to do any of the following: ... [¶] (4) make that expert available for a deposition." (Code Civ. Proc. §2034(j), emphasis added.) Judge Monarch merely applied the statute's plain words.

Without expert witness testimony Finnegan had no case. The judgment is affirmed. The De Franciscos will recover their costs on appeal.

SILLS, P.J

WE CONCUR:

ARONSON, J

IKOLA, J